

Lewis Center for Educational Research

BP 1312.4 COMMUNITY RELATIONS Title IX Sexual Harassment Policy and Grievance Procedures

Adopted: October 17, 2022

Revised:

The grievance procedures described in this policy shall be used to address any complaint governed by Title IX of the Education Amendments of 1972 alleging that a Lewis Center for Educational Research (“LCER”) employee or student, while in an education program or activity in which an LCER school exercises substantial control over the context and respondent, was subjected to one or more of the following forms of sexual harassment: (34 CFR 106.30, 106.44)

1. An LCER employee conditioning the provision of an LCER aid, benefit, or service on a person's participation in unwelcome sexual conduct.
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to LCER’s education program or activity.
3. Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291.

All other sexual harassment complaints shall be investigated and responded to pursuant to BP 4319.11 Personnel Unlawful Harassment, Discrimination, and Retaliation or BP 1312.3 Community Relations Uniform Complaint Policy and Procedures. The determination of whether the allegations meet the definition of sexual harassment under Title IX shall be made by **LCER's Title IX Coordinator (“Coordinator”)** or designee:

Stacy Newman
Director of Human Resources
Building M, 17500 Mana Road, Apple Valley, CA 92307
760/946-5414 extension 220, snewman@lcer.org

Because the complainant has a right to pursue a complaint under BP 4319.11 or BP 1312.3 for any allegation that is dismissed or denied under the Title IX complaint procedure, the Coordinator shall ensure that all requirements and timelines for BP 4319.11 or BP 1312.3 are concurrently met while implementing the Title IX procedure.

Reporting Allegations/Filing a Formal Complaint

A report of sexual harassment shall be submitted directly to or forwarded to the Coordinator using the contact information listed above or to the employee's direct supervisor or other LCER administrator, who shall forward the report to the Coordinator within one day of receiving the report.

Upon receiving such a report, the Coordinator shall inform the complainant of the process for filing a formal complaint.

A formal complaint, with the complainant's physical or digital signature, may be filed with the Coordinator in person, by mail, by email, or by any other method authorized by LCER. (34 CFR 106.30)

Even if the alleged victim chooses not to file a formal complaint, the Coordinator may file a formal complaint in situations in which a safety threat exists or in other situations as permitted under the Title IX regulations, including as part of the LCER's obligation to not be deliberately indifferent to known allegations of sexual

harassment. In such cases, the alleged victim is not a party to the case, but will receive notices as required by the Title IX regulations at specific points in the complaint process.

The Coordinator, investigator, decision-maker, or a facilitator of an informal resolution process does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, and that such persons receive training in accordance with 34 CFR 106.45. (34 CFR 106.45)

Supportive Measures

Upon receipt of a report of Title IX sexual harassment, the Coordinator shall promptly contact the complainant to discuss the availability of supportive measures and shall consider the complainant's wishes with respect to the supportive measures implemented. Supportive measures shall be offered as appropriate, as reasonably available, and without charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures shall be non-disciplinary, non-punitive, and do not unreasonably burden the other party, including measures designed to protect the safety of all parties or LCER's educational environment or to deter sexual harassment. Such measures may include, but are not limited to, counseling, extensions of deadlines, modifications of work schedules, mutual restrictions on contact, changes in work locations, leaves of absence, increased security, and monitoring of certain areas of the campus. (34 CFR 106.30, 106.44) The Coordinator shall consider the complainant's wishes with respect to supportive measures.

LCER shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair LCER's ability to provide the supportive measures (34 CFR 106.30).

Emergency Removal

If an LCER employee is the respondent, the employee may be placed on administrative leave during the pendency of the formal complaint process. (34 CFR 106.44)

If the respondent is a student, LCER may, on an emergency basis, remove the student from LCER's education program or activity, provided that LCER conducts an individualized safety and risk analysis, determines that removal is justified due to an immediate threat to the physical health or safety of any student or other individual arising from the allegations, and provides the student with notice and an opportunity to challenge the decision immediately following the removal. This authority to remove a student does not modify a student's rights under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973. (34 CFR 106.44)

Dismissal of Complaint

The Coordinator shall dismiss a formal complaint if the alleged conduct would not constitute sexual harassment as defined in 34 CFR 106.30 even if proved. The Coordinator shall also dismiss any complaint that did not occur in the LCER's education program or activity or did not occur against a person in the United States, and may dismiss a formal complaint if the complainant notifies LCER in writing that the complainant would like to withdraw the complaint or any allegations in the complaint, the respondent is no longer employed by LCER, or sufficient circumstances prevent LCER from gathering evidence sufficient to reach a determination with regard to the complaint. (34 CFR 106.45)

Upon dismissal, the Coordinator shall promptly, and simultaneously to the parties, send written notice of the dismissal and the reasons for the dismissal and shall inform them of their right to appeal the dismissal of a formal complaint or any allegation in the complaint in accordance with the appeal procedures described in the section "Appeals" below. (34 CFR 106.45)

If a complaint is dismissed on the grounds that the alleged conduct does not constitute sexual harassment as defined in 34 CFR 106.30, the conduct may still be addressed pursuant to BP 4319.11, BP BP 1312.3 or other LCER policy as applicable.

Informal Resolution Process

When a formal complaint of sexual harassment is filed, LCER may offer an informal resolution process, such as mediation, at any time prior to reaching a determination regarding responsibility. LCER shall not require a party to participate in the informal resolution process or to waive the right to an investigation and adjudication of a formal complaint. (34 CFR 106.45)

LCER may facilitate an informal resolution process provided that LCER: (34 CFR 106.45)

1. Provides the parties with written notice disclosing the allegations, the requirements of the informal resolution process, the right to withdraw from the informal process and resume the formal complaint process, and any consequences resulting from participating in the informal resolution process, including that records will be maintained or could be shared.
2. Obtains the parties' voluntary, written consent to the informal resolution process.

Formal Complaint Process

If a formal complaint is filed, the Coordinator shall provide the known parties with written notice of the following: (34 CFR 106.45)

1. LCER's complaint process, including any informal resolution process.
2. The allegations potentially constituting sexual harassment with sufficient details known at the time, including the identity of parties involved in the incident if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident if known. Such notice shall be provided with sufficient time for the parties to prepare a response before any initial interview.
3. If, during the course of the investigation, LCER investigates allegations about the complainant or respondent that are not included in the initial notice, the Coordinator shall provide notice of the additional allegations to the parties.
4. A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the complaint process.
5. The opportunity for the parties to have an advisor of their choice who may be, but is not required to be, an attorney, and the ability to inspect and review evidence.
6. The prohibition against knowingly making false statements or knowingly submitting false information during the complaint process.

The above notice shall also include the name of the investigator, facilitator of an informal process, and decision-maker and shall inform the parties that, if at any time a party has concerns regarding conflict of interest or bias regarding any of these persons, the party should immediately notify the Coordinator.

Investigation Procedures

During the investigation process, LCER shall: (34 CFR 106.45)

1. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

2. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
3. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.
4. Not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding, although LCER may establish restrictions regarding the extent to which the advisor may participate in the proceedings as long as the restrictions apply equally to both parties.
5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate.
6. Send in an electronic format or hard copy to both parties and their advisors, if any, the evidence that is directly related to the allegations raised in the complaint, and provide the parties at least 10 calendar days to submit a written response for the investigator to consider prior to the completion of the investigative report.
7. Objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, and determine credibility in a manner that is not based on a person's status as a complainant, respondent, or witness.
8. Create an investigative report that fairly summarizes relevant evidence and, at least 10 calendar days prior to the determination of responsibility, send to the parties and their advisors, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. (34 CFR 106.45)

Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.

Written Decision

The LCER President/Chief Executive Officer ("CEO") or designee shall designate an employee as the decision-maker to determine responsibility for the alleged conduct, who shall not be the Coordinator or a person involved in the investigation of the matter. (34 CFR 106.45)

After the investigative report has been sent to the parties, but before reaching a determination regarding responsibility, the decision-maker shall afford each party the opportunity to submit written, relevant questions that the party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

The decision-maker shall issue, and simultaneously provide to both parties, a written decision as to whether the respondent is responsible for the alleged conduct. (34 CFR 106.45)

The written decision shall be issued within 45 calendar days of the receipt of the complaint.

The timeline may be temporarily extended for good cause with written notice to the complainant and respondent of the extension and the reasons for the action. (34 CFR 106.45)

In making this determination, LCER shall use the "preponderance of the evidence" standard for all formal complaints of sexual harassment. (34 CFR 106.45)

The written decision shall include the following: (34 CFR 106.45)

1. Identification of the allegations potentially constituting sexual harassment as defined in 34 CFR 106.30.
2. A description of the procedural steps taken from receipt of the formal complaint through the written decision, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held if LCER includes hearings as part of the grievance process.
3. Findings of fact supporting the determination.
4. Conclusions regarding the application of LCER's code of conduct to the facts.
5. A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility, disciplinary sanctions LCER imposes on the respondent, and whether remedies designed to restore or preserve equal access to LCER's educational program or activity will be provided by LCER to the complainant as required by law.
6. LCER's procedures and permissible bases for the complainant and respondent to appeal.

Appeals

Either party may appeal LCER's decision or dismissal of a formal complaint or any allegation in the complaint, if the party believes that a procedural irregularity affected the outcome, new evidence is available that could affect the outcome, or a conflict of interest or bias by the Coordinator, investigator(s), or decision-maker(s) affected the outcome. If an appeal is filed, LCER shall: (34 CFR 106.45)

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
2. Ensure that the decision-maker(s) for the appeal is trained in accordance with 34 CFR 106.45 and is not the same decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Coordinator.
3. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
4. Issue a written decision describing the result of the appeal and the rationale for the result.
5. Provide the written decision simultaneously to both parties.

An appeal must be filed in writing within 10 calendar days of receiving the determination, stating the grounds for the appeal and including any relevant documentation in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered.

A written decision shall be provided to the parties within 20 calendar days from the receipt of the appeal.

Either party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights within 180 calendar days of the date of the most recently alleged misconduct.

The complainant shall be advised of any civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders that may be available under state or federal antidiscrimination laws, if applicable.

Remedies

When a determination of responsibility for sexual harassment has been made against the respondent, LCER shall provide remedies to the complainant. Such remedies may include the same individualized services described above in the section "Supportive Measures," but need not be non-disciplinary or non-punitive and need not avoid burdening the respondent. (34 CFR 106.45)

Disciplinary Actions

LCER shall not impose any disciplinary sanctions or other actions against a respondent, other than supportive measures as described above in the section "Supportive Measures," until the complaint procedure has been completed and a determination of responsibility has been made. (34 CFR 106.44)

When an employee is found to have committed sexual harassment or retaliation, LCER shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and LCER policy and procedures.

Record-Keeping

The CEO or designee shall maintain, for a period of seven years: (34 CFR 106.45)

1. A record of all reported cases and Title IX investigations of sexual harassment, any determinations of responsibility, any audio or audiovisual recording and transcript if applicable, any disciplinary sanctions imposed, any remedies provided to the complainant, and any appeal or informal resolution and the results therefrom.
2. A record of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment, including LCER's basis for its conclusion that its response was not deliberately indifferent, the measures taken that were designed to restore or preserve equal access to the education program or activity, and, if no supportive measures were provided to the complainant, the reasons that such a response was not unreasonable in light of the known circumstances.
3. All materials used to train the Coordinator, investigator(s), decision-maker(s), and any person who facilitates an informal resolution process. LCER shall make such training materials publicly available on its web site, or if LCER does not maintain a web site, available upon request by members of the public.

TITLE IX SEXUAL HARASSMENT COMPLAINT FORM

Your Name: _____ Date: _____

Date of alleged incident(s): _____

Name of person(s) you have the complaint against: _____

List any witnesses that were present:

Where did the incident(s) occur? _____

Please describe the events or conduct that are the basis of your complaint by providing as much factual detail as possible (i.e. specific statements; what, if any, physical contact was involved; any verbal statements; what did you do to avoid the situation, etc.) Attach additional pages, if needed:

I hereby authorize LCER to disclose the information I have provided as it finds necessary in pursuing its investigation. I hereby certify that the information I have provided in this complaint is true and correct and complete to the best of my knowledge and belief. I further understand that providing false information in this regard could result in disciplinary action up to and include termination.

Signature of Complainant

Date

Print Name

To be completed by LCER:

Received by: _____

Date

Follow up meeting with Complainant held on: _____